

<b>Date of Meeting</b>	17 September 2015
<b>Application Number</b>	15/01052/OUT
<b>Site Address</b>	Land off Rabley Wood View, Marlborough Wiltshire
<b>Proposal</b>	Residential development and associated works (Resubmission of 14/01766/OUT)
<b>Applicant</b>	Manton House Estate
<b>Town Council</b>	MARLBOROUGH
<b>Division</b>	MARLBOROUGH EAST
<b>Grid Ref</b>	419103 170090
<b>Type of application</b>	Outline Planning
<b>Case Officer</b>	Peter Horton

### Update

Members will recall that this application was discussed at the previous meeting of the Eastern Area Planning Committee on September 17<sup>th</sup>. A resolution to approve the application in accordance with the officer recommendation was debated and defeated. Members then resolved to defer a final decision on the application, but indicated that they were minded to refuse it, but wished to be advised at the next meeting on potential reasons for refusal of the application. The Area Development Manager was requested to prepare a report on potential reasons for refusal.

Officers have re-visited the site and its surroundings to assess reasons that would, in their professional opinion, have the best chance of being defensible on appeal.

**Technical reasons for refusal:** As members will be aware, reasons for refusal have to be supported by evidence. In this case, whilst objections have been raised on highway grounds and on the ability to effectively drain the ground; neither of these is supported by expert evidence, either from the applicants or from the council's highway officers, drainage team or the Environment Agency. The only reliable conclusion that can be drawn from this is that it is technically possible to construct the development and that putting forward reasons for refusal on these grounds would be difficult to defend and potentially leave the Council open to a claim for costs for unreasonable behaviour. It is therefore considered that this is not an avenue that the Council should pursue.

**Landscape Impact:** The site is within the North Wessex Downs Area of Outstanding Natural Beauty. The NPPF makes it clear that 'great weight' should be given to conserving the landscape and scenic beauty in such areas. Whilst officers did not raise any objection on these grounds, it is open for members to take a different view, giving weight to their own assessments of this issue, and to consider that the adverse impacts identified outweigh the benefits of the scheme set out in the report.

In this respect, whilst it is difficult to argue that a development of this scale in this location would have landscape impacts across a wide area, it will have localised impacts that could be construed to be harmful and to conflict with the advice on this matter in the NPPF and Wiltshire Core Strategy. For example, the current view from the Bay Bridge-Poulton Farm byway is of an agricultural landscape of water meadows set against the backdrop of the edge of Savernake Forest. The character of this would be changed by the change in nature of the water meadow to a more formal casual open space area suitable for playing ball games on, and this change could be construed as harmful. Similarly, the existing vegetation, including the trees, along the eastern side of the existing play area currently forms a landscaped screen that clearly delineates the built-up area of Marlborough from the agricultural landscape alongside the river Og. The reduction in height of a significant length of this vegetation to 1.5 metres would open this area up to view, and would expose the new housing proposed to view, potentially harming the landscaped setting of this existing rural/urban boundary. Members could therefore reasonably conclude that the landscape impacts arising from the development in this part of the area of outstanding natural beauty are harmful enough to warrant refusal of the application.

**Replacement of existing open space.** This centres on the 'equivalence' issue. Put succinctly, paragraph 74 of the NPPF states that open space, sports and recreational buildings and land, including playing fields, should not be built upon unless the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

In terms of size, the application does provide an equivalent area. The argument about quality is difficult, as clearly the provision of a MUGA as part of the development where one does not currently exist would be an improvement, but on the other hand, doubts have been expressed about the suitability of the casual open space area for all year round use compared to the existing area that clearly drains as it is on a side of a slope.

The key issue may be 'suitable location'. The existing recreational area is adjacent to many of the houses on the existing estate and the residents of these and other nearby houses in Rogers Meadow and The Thorns have easy and comparatively safe access to this area. The proposal would see most of the existing area built upon. Although the equipped play space and MUGA would remain in a similar location to the existing play area, for some residents/children, it would require the crossing of a road to reach this and the casual play area. The casual play area would be more remote and separated by the drop-off in levels that currently exists between the existing recreational area and the water meadow, which would make direct oversight more difficult. In short, it could be argued that the location of the replacement open space and recreational land is not in such a suitable location as the existing recreational area and that consequently local residents would be disadvantaged.

**Archaeology:** Members may recall that the lack of an archaeological field evaluation was a reason for refusal of the previous application. Had members been minded to approve this second application, the recommendation from officers was to defer and delegate a final decision until such an evaluation had been carried out, and only to grant permission if the evaluation revealed that there was no reason to withhold permission on archaeological grounds. However, in the event of a decision to refuse planning permission, the absence of an archaeological evaluation when the County Archaeologist considers, based on the evidence submitted, that that one is necessary, is a material consideration.

Based on the above, and in accordance with the request from members at the last committee, officers consider that the following reasons for refusal could reasonably be defended at an appeal.

1. The proposed development is located within the North Wessex Downs Area of Outstanding Natural Beauty, at the interface between the built-up area of Marlborough and the countryside beyond. Government policy, as set out in the NPPF (paragraph 115), is that great weight should be given to conserving the landscape and scenic beauty of this area. The proposed development would conflict with this policy and would have a harmful impact on the landscape of this part of the AONB, through the change of use and associated works required to convert that part of the site lying within the water meadows to casual open space, and through the works required to the landscape screen between the water meadows and the proposed equipped play area and MUGA, which would open up the new housing to direct view from nearby rights of way and would reduce the existing screening of the built-up area that currently enhances the setting of the town at this rural/urban interface. This would conflict with Core Policy 51 of the Wiltshire Core Strategy.

2. The proposed development would result in the loss of the main part of the existing and long established open space and recreational area at Rabley Wood. This existing space provides residents of nearby houses with a valued, safe and accessible area that enjoys open and elevated views of the surrounding landscape of the area of outstanding natural beauty and that enjoys a maturing landscaped boundary that provides a natural form of enclosure at the interface with the countryside beyond. The proposed replacement facilities would be less accessible from many of these houses, and in some cases would involve the crossing of a road to serve the new dwellings, making them less safe and given the greater distance involved, the new area would also have less oversight from existing dwellings. The proposal would therefore fail to meet the requirement in NPPF paragraph 74 in that the loss resulting from the proposed development would not be replaced by equivalent or better provision in terms of a suitable location that enjoys the benefits the current location offers. This would conflict with Core Policy 52 of the Wiltshire Core Strategy, which requires replacement green infrastructure to be equal to or above its current value and quality and that maintains the integrity and functionality of the green infrastructure network.

3. The archaeological assessment submitted with the application has indicated some potential for archaeological remains to be impacted by the proposed development. In these circumstances, it is considered necessary for a field evaluation to be carried out to fully assess the potential impact on any heritage asset of archaeological interest, in accordance with paragraph 128 of the NPPF.

For information, the original report presented to the committee is attached as Appendix 1 to this report and is set out below.

## **Appendix 1 – The Original Report**

### **Reason for the application being considered by Committee**

This application has been called to Committee at the request of Councillor Stewart Dobson.

#### **1. Purpose of Report**

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved subject to satisfactory results of the archaeological field evaluation investigations, with conditions, and subject to a new legal agreement which shall include provisions to secure deeds of variation to effectively substitute the existing open space land (covered by two historic Section 52 agreements), with the proposed compensatory open space land proposed. The legal agreement shall also secure the provision of 40% affordable housing, the provision of open space and an open space maintenance commuted sum.

#### **2. Report Summary**

The key planning issues are considered to be;

- The principle of the proposed residential development.
- Whether the existing recreational space would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
- Visual impact including impact on the AONB
- Highway safety
- Residential amenity
- Flooding, foul and surface water drainage
- Contamination
- Ecology
- Archaeology
- Sustainable construction
- Legality of varying the existing Section 52 agreements
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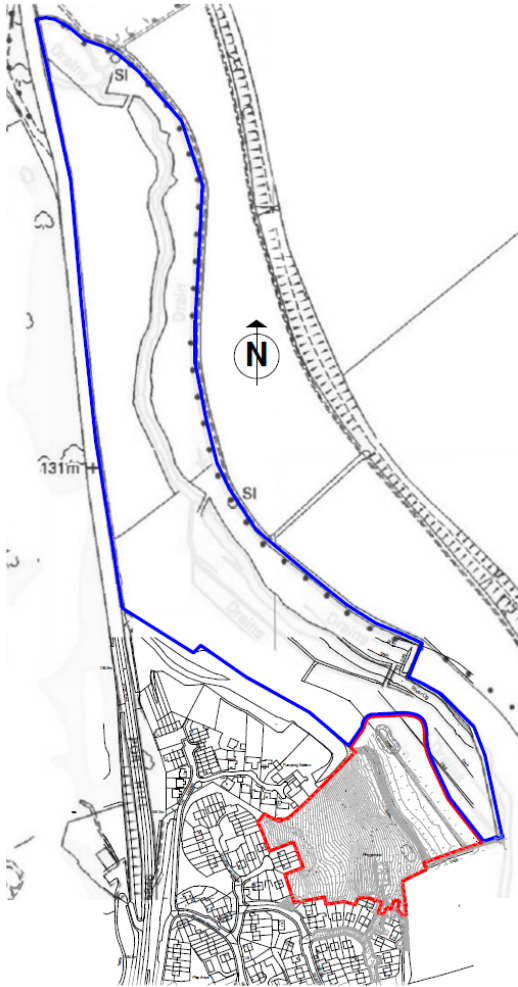
#### **3. Site Description**

The application site lies towards the northern edge of Marlborough. The site is accessed by proceeding northwards from Marlborough Town Centre on the A346. Proceed up Herd Street and before Marlborough Golf Club, turn right into North View Place. Turn immediately left into Newby Acre and follow this road around to the right. After this corner, turn left into Rogers Meadow and first right into Rabley Wood View and take the first left turning down to the play area where the site can be found at the end of the no through road.

The site is in two parts:

(a) The greater part of the site is a sloping parcel of land bounded by residential development on three sides. It is currently mostly laid to grass, with an area of trees towards the south and west edges and a landscaped boundary to the east with the open countryside beyond. Although mostly used for informal recreation, the site also includes an equipped play area for smaller children and other pieces of equipment spread around the edges of the site for older children. The site also includes a set of goalposts. This part of the site lies within the Marlborough Limits of Development (LOD) and is owned by Wiltshire Council.

(b) Also included within the site is an area of agricultural land beyond the current recreation field, on the other side of the landscaped boundary. This part of the site lies beyond the LOD, in the countryside. It is owned by the Manton Estate.



Location Plan

#### 4. Planning History

K/16218	Erection of 37 one bedroom flats; 53 two bedroom houses; 16 three bedroom houses, parking and open space – approved 1990.
K/19339	Erection of 115 dwellings and associated works - approved 1992
K/86/1200	Residential Development at Portfields – approved December 1987
14/01766/OUT	Residential development and associated works – refused August 2014
14/03379/FUL	Change of use from agricultural land to nature park including compensatory recreational land associated with the residential development of the play area off Rabley Wood View – refused August 2014

#### 5. The Proposal

This is an outline proposal for an estate of around 39 dwellings, with all matters reserved for subsequent approval. Within the estate a play area (0.2357 ha), to include play equipment and a multi use games area (MUGA), would be provided. In that part of the site which lies beyond the LOD, an area of “compensatory open space” for informal recreation/free play (1.1490 ha) would be provided and also a SUDS balancing pond (0.0510ha). Two 1.5m wide openings would link the equipped play area with the compensatory open space.



Illustrative Site Layout

## 6. Planning Policy

Wiltshire Core Strategy: Core Policies 1, 2, 14, 41, 43, 45, 50, 51, 52, 57, 58, 60 and 61.

Saved Kennet Local Plan policies HC34 and HC37.

Supplementary Planning Guidance: Community Benefits from Planning and the Kennet Landscape Conservation Strategy are also applicable.

The National Planning Policy Framework (NPPF), with particular regard to chapters 4, 6, 7, 8, 10, 11 and 12. Paragraph 74 is particularly relevant, which states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

## 7. Summary of consultation responses

**Marlborough Town Council:** Objects on the grounds of highway safety, road access, nature conservation, traffic generation, layout of buildings and general safety issues with regard to children.

**Action for the River Kennet (ARK):** Objects to the proposal to drain a substantial area of the existing water meadow in the flood plain. As well as their ecological importance - as habitats and their role in reducing pollution – water meadows fulfil the vital function of absorbing water in periods of substantial rainfall. Drainage such as proposed would severely reduce the capacity of the water meadow to fulfil this function naturally.

ARK has recently carried out substantial river corridor and habitat improvements to this part of the River Og. These were funded by DEFRA, to improve habitat, reduce erosion and pollution, and in conjunction with Marlborough Council to increase public access.

Thames Water has committed to a £25 million investment to protect the habitat of the Og and Kennet by reducing water abstraction. Draining the water meadows along the River Og reduces the value of Thames Water's investment to protect the environment.

ARK has concerns about the scale of the housing development, also identified by Thames Water, namely the additional load it would put on an already overstretched local water supply and sewage system. The sewer network in Marlborough is already unable to cope during periods of high groundwater. Adding further load to the system on the floodplain, where groundwater infiltration to sewers is already a problem will result in more pollution to the rivers Kennet and Og.

**Wiltshire Council Archaeologist:** An archaeological assessment has been submitted with the application which has highlighted potential for archaeological remains to be impacted by the proposed development. Therefore requires a field evaluation prior to any grant of planning permission.

**CPRE:** Does not object in principle to the development. However have concerns regarding highway matters given existing highway problems in the area and request that if approved, there should be a condition requiring off-site highway improvements.

**Wiltshire Council Ecologist:** Initial comments: Requested that a mitigation and enhancement strategy, as required under NPPF, be drawn up and submitted to the LPA for approval. This should seek to identify and address the potential impacts that may result from the current proposal and provide mitigation solutions that will retain, create and enhance connectivity both through and around the site and into adjacent habitat areas. It must also address how the riparian corridor will be protected from the effects of additional drainage and ground works that will be necessary to provide the new play area, together with the effects of human disturbance. There is an opportunity to provide significant enhancement for biodiversity as a result of this proposal. Consideration should be given to potential augmentation of hedge and tree lines, planting for wildlife around the attenuation pond and provision of bird boxes, bat boxes and reptile hibernaculae.

Subsequent comments following the receipt of the mitigation and enhancement strategy: No objection subject to a condition. A suitable level of mitigation and enhancement for the site has been proposed. Just one slight point of concern: whilst it is excellent to have the additional aquatic vegetation proposed for the balancing pond, will the function of the pond be diminished by the addition of the vegetation?

**Wiltshire Council Education:** Following the introduction of Community Infrastructure Levy (CIL) on 18 May 2015, required contributions can be covered by CIL rather than by a S106 agreement.

**Environment Agency:** No objection subject to conditions.

**Wiltshire Council Environmental Protection:** In the light of the potential presence of a historic landfill site in the area, requires a contaminated land condition.

**Wiltshire Council Highways:** No objection subject to conditions.

The location is considered to be sustainable in transport terms, and the local roads and junctions will cope adequately with the levels of traffic which would be generated. The site is located on the edge of the existing built environment and is within walking distance of access to public transport and within the recommended cycling distance of the town centre.

The existing junction of the short Rabley Wood View cul-de-sac with the main Rabley Wood View road should be widened slightly from 4.5m to 5m by reducing the footpath width on the south eastern side, to more easily enable two vehicles to pass.

Construction of the site and the access alterations will lead to damage to the existing highway on the Rabley Wood View cul-de-sac which provides the development access. The cul-de-sac will need to be resurfaced at the conclusion of the development.

The existing dirt path from the north western corner of the site to the Thorns must be made up to a surfaced 2 metre wide path as this will be a desire line for pedestrians. The path will be included as public open space and should be subject to the maintenance arrangement put in place.

**Wiltshire Council Housing Team:** There is a demonstrable need for affordable housing in Marlborough and therefore a 40% affordable housing on-site contribution will be required. This would represent 16 of the proposed 39 homes: 12 should be for affordable rent and 4 for shared ownership.

**Wiltshire Council Land Drainage Engineer:** Although the application is light on detail, the site is viable in principle. The site is outside flood zones 2 and 3 so there are no fluvial flood problems. The site is also clear of the surface water flood mapping zones and of that area shown to be vulnerable with respect to groundwater. No objection subject to a condition

**Wiltshire Council Landscape Officer:** No objection. The proposed residential development of the application site land within the existing settlement boundary is unlikely to generate any wider landscape or visual effects which could give rise to an 'in principle landscape objection'. This area of new residential development is proposed within a fairly obvious residential infill site which is contained within the existing defined Limits of Development for Marlborough, and which will be viewed from within, and against the context and backdrop of existing residential development. The potential for wider far reaching visual impacts into the elevated AONB are limited by the rising and rolling topography of the Og Valley landform opposite, while strong existing vegetation growing along the site's eastern boundary would help screen and filter visual effects from the River Og Valley floor. While former water meadow land is still proposed for some development, the form of development on this land outside the existing settlement boundary is now less urbanising and harmful to river corridor/floodplain character than with the previous application proposals.



### **Wiltshire Council Open Space Officer:**

**Equipped Play Space:** The current Equipped Play Space on Rogers Meadow measures 450sqm. The proposed development would generate a need for 291sqm. It is therefore requested that a minimum of 741sqm (450 + 291) of the Equipped Play Space is equipped with children's play equipment. Equipped Play Space has been put forward in the submitted Design & Access Statement. However the activity zone has not been specified and unless there is an activity zone of 741sqm or more there would be an under provision increase from the current under provision of 1342sqm in the immediate vicinity.

**Casual Play Space:** The development would generate a need for 385sqm of Casual Play Space. In order to directly relate the Casual Play Space to the development, it has been noted from the Design & Access Statement that it is proposed to provide 2,368sqm of Casual Play Space within the development, i.e. 3,109sqm of Equipped and Casual Space, less 741sqm of equipped Play Space, as detailed above.

The existing Rogers Meadow Casual Open Space comprises an area of 1.15ha or 11,500sqm, this along with the additional 385sqm required to cater for the increased demand, will be reduced due to the proposed development, to 2,368sqm comprising the Open Space adjoining the Play Area and the Woodland Open Space.

It is noted from the Design & Access Statement however, that there is to be approximately 1 hectare of Compensatory Open Space, catering for the loss of the 9,132sqm of Public Open Space which would be taken by the proposed residential dwellings. Therefore the proposed onsite provision of Casual Play Space is adequate for the proposed development.

It has also been noted that the free play area on the compensatory meadow land will benefit from drainage and landscaping that will enable the majority of the compensatory land to be useable all year round by dog walkers and for play. This land should be laid out and maintained to the same quality as the existing grassland.

**Formal Sports Pitches:** Initially stated that the Council would seek to negotiate a commuted payment for the improvement of existing facilities in lieu of on site provision. The relevant figure would be £24,492. However following the introduction of CIL, confirmed that the required contribution can be covered by CIL rather than by a S106 agreement.

**Maintenance Requirements:** The developer will be expected to demonstrate to Wiltshire Council that adequate arrangements for the ongoing maintenance of recreational and amenity space associated with the development have been made, such provision will be required in perpetuity.

The on-site Open Space and Equipped Play Space should be transferred and subsequently maintained by a management company, or by the Town Council (subject to discussion/agreement and with a Maintenance Commuted Sum). Prior to adoption the open space should be fully laid out, equipped and ready for use before either the management company, or the Town Council (subject to discussion/agreement and with a Maintenance Commuted Sum) accepts responsibility.

**Sport England:** Objects. The proposal conflicts with NPPF para. 74 in that an area used as an informal playing field by the community would be lost. It also conflicts with Sport England's document 'Planning for Sport Aims and Objectives', whose Objective 1 is "to prevent the loss of sports facilities and land along with access to natural resources used for

sport". Limited details have been provided of the proposed MUGA. However Sport England does not consider that this is adequate replacement for the facility that will be lost.

**Thames Water:** Requires conditions should permission be granted.

**Wiltshire Council Tree Officer:** It is essential that the existing tree cover bordering the open space is maintained to offset the visual disruption to the existing dwellings with significant planting of established gaps and the creation of wildlife corridors throughout the proposed development site.

**Wiltshire Council Urban Design:** Supports, with recommendations for improvement that could be dealt with at reserved matters stage. The layout is an improvement on that of the previous application. The layout does not maximise solar gain.

## **8. Publicity**

Twenty-seven representations of objection have been received, some of which provide lengthy and detailed comment. The points raised have been briefly summarised as follows:

### Legalities

- The existing legal agreements (planning permissions K/82/0144 and K/86/1200 refer) establish the existing open space in perpetuity and restrict any development on the site.
- Condition no. 4 to K/16218 states that the areas defined on the approved plans for public open space, amenity land and play areas shall be retained in perpetuity for those uses.
- Wiltshire Council owns the land for which planning permission is being sought: there is a conflict of interest which needs to be addressed by an independent review.

### Principle of development

- The proposed compensatory open space is outside of the Marlborough Limits of Development and so should not be developed.

### Highway matters

- The proposed houses would put pressure on surrounding roads during the building process and afterwards. The local road network is already congested, with parked cars making the roads single lane only.
- The increase in traffic volume would lead to safety issues for pedestrians.
- Contrary to the traffic survey conducted by the applicants, exit from North View Place on to the A346, particularly towards Swindon, is difficult and dangerous.
- The current proposal for 39 rather than 46 houses will not ameliorate this situation as the entrance from the A346 requires people to turn right across the traffic flow from Swindon to access North View Place and Rogers Meadow.
- The whole highway system at this, the only point of access/exit to the whole of the estate, already needs complete revision and is long overdue for improvement on safety grounds.
- In icy weather there is no way out getting into and out of the estate, so residents park on the road at the top of the estate. With more houses there would be no room for everyone who needs to, to park there.

- The Transport Statement states that “the walking and cycling network in the vicinity of the proposed development site is generally good”. However there are no cycle paths connecting the area to the town centre.
- The increase in traffic volume would lead to increased air pollution around Herd Street, where air pollution is already a problem.

### Landscaping

- The proposal would harm the landscape of the AONB, contrary to NPPF para. 115.
- The appearance and character of the water meadow would be totally changed by drainage and levelling and the necessary cutting of grass to maintain it as a play area.
- A large fenced drainage pond would stand out in the landscape.
- Visibility through to the proposed compensatory open space would be impossible without cutting huge swathes of trees down. Woodland and existing hedges on the site should remain as they are – no tree felling should take place to facilitate the development.
- The trees on the western edge of the site are in poor condition and some of them are the wrong species to be so close to present homes. They were not mentioned in the Manton Estate survey but need to be evaluated as part of the whole.

### Recreation

- There would be a loss of valued open space.
- The proposed compensatory open space is not “like for like” and is not acceptable
- The proposal would be contrary to NPPF para. 74 which states that open spaces should not be built on unless the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. However the proposed recreational facilities will be of inferior quality, lower quantity and the compensatory open space would not be a suitable location.
- The existing area is 1.7ha in size on one free draining site, suitable for use every day of the year and easily viewed from all sides. The proposal is for just 1.3ha of recreation land split into two sites, mainly on a water meadow which even if satisfactorily drained is unlikely to be usable all year round.
- The proposed compensatory open space in no way compensates for the loss of this much used recreation ground as it will be further from existing houses, with no natural surveillance from existing homes and being closer to the hazards of the River Og and the proposed SUDS drainage pond.
- Unexploded WWII ordnance has been found on the site of the compensatory open space.
- Parents would have to supervise their children in order to “see” them. This would mean that only older children would be likely to use it.
- The previous reason for refusal still stands.
- How would maintenance of the compensatory open space be carried out when there are no vehicular access points shown on the plan to allow grass cutting machinery etc to gain access? Likewise, emergency vehicles would not be able to get through to attend to any accidents.
- The proposed recreation areas would be much more expensive to fund and maintain compared to the cost of managing the existing park.

### Amenity

- There would be noise and pollution from construction traffic.
- The proposed new properties would overlook 31 The Thorns.

## Flooding

- The proposed compensatory open space is unsuitable due to high risk of flooding.
- The water meadow currently does its job of preventing flooding further down river in Marlborough and draining it would cause flooding elsewhere. It would not be amenable to draining and even if this were tried it would almost certainly flood again the following year.
- Once Thames Water cease abstraction from the Kennet in 2016 then the water table will be considerably higher which will increase the risk of flooding.

## Contaminated Land

- No investigation has yet been undertaken to find out what contamination there may be. Disturbance of the area could impact the health of local residents. Old X-Ray equipment is believed to be buried in the area.

## Ecology

- Hacking pathways through the existing mature hedge line on the eastern edge of the site would destroy valuable wildlife habitat and the paths would act as a barrier to the movement of wildlife along the existing wildlife corridor.
- Any change to the water meadow further reduces the natural habitat of the flora and fauna and affects the biodiversity of the Og valley.
- To drain the water meadow will lead to flooding elsewhere, destroying much valued wetland areas.
- To bring development closer to the water meadow would increase predation of wildlife by domestic cats.

## Other Issues

- The sewerage system cannot cope with the existing numbers of dwellings.
- Too many 4 bedroomed properties are proposed, which would be unaffordable to local young people and first time buyers.
- How will schools and surgeries cope with the increased demand?
- The SUDS Manual issued by the Construction Industry Research and Information Association (CIRIA) in November 2013 requires a careful consideration as to the positioning and design of a SUDS pond to ensure public safety: "An open and accessible situation with local roads, footpaths and houses providing a high degree of natural surveillance from surrounding properties and residents will serve to reduce risks and maximise potential amenity benefits."
- The applicant is inaccurate in saying that children use the water meadow to play on a regular basis. This is simply not true. The only regular users are dog walkers.

## **9. Planning Considerations**

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

### **9.1 Principle of Development**

That part of the site proposed for residential development lies within the Limits of Development (LOD) defined for Marlborough as set out in the Kennet Local Plan 2011 and

as carried forward into the Wiltshire Core Strategy. This boundary defines where the principle of new development is considered acceptable and sustainable in terms of being accessible to local facilities and services. The NPPF sets out a strong presumption in favour of permitting sustainable development. It particularly supports the provision of new housing as set out in paragraph 49, and this has been reinforced by Ministerial Statements actively seeking a significant boost in housing land supply in order to help meet growing demand and deal with affordability. The Wiltshire Core Strategy identifies the accommodation of a minimum of 920 homes for the Marlborough Community Area in the plan period. The proposed site would make a meaningful contribution to help meet this target.

The application proposes to make provision for 40% of the proposed units to be affordable housing in line with the Council's current approach in Marlborough. This would be a significant additional benefit, particularly given the high level of affordable housing need in the area. This would need to be secured via a S106 agreement.

## **9.2 The quantity, quality and suitability of location of the proposed open space**

Paragraph 74 of the NPPF states that: "existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location". The current proposal therefore needs to be assessed against this requirement.

### **a) Quantity of open space**

The analysis of open space figures can prove complex. However the figures as stated below have been confirmed by the agent to be correct. For information, 1ha = 10,000m<sup>2</sup>.

i) Equipped play space: There is currently 0.0450ha of equipped play space on the site that needs to be replaced. A further 0.0290ha of equipped play space is required to meet the demands of the 39 new dwellings. This means that 0.0740ha of equipped play space is required in total on the site. The proposal is to provide a designated equipped play area of 0.2357ha, within which would be a 0.0420ha MUGA. The MUGA would be a separately fenced area within the play area and this would leave the remainder of the space (0.1937ha) for equipped play space outside of the MUGA. The area available for equipped play space would therefore significantly exceed the 0.0740ha that is required by the Council's standards.

ii) Casual play space: The total area of the current open space which is proposed to be developed (i.e. occupied by housing, roads and parking areas) is 1.1500ha. The development of 39 dwellings creates a casual play requirement of 0.0384ha, thus there is an overall need for 0.1124ha of equipped and casual open space within the site (the 0.0740ha of required equipped play space plus the casual play requirement of 0.0384ha). The proposed equipped play space of 0.2357ha is therefore well in excess of the required equipped and casual open space requirement of 0.1124ha, resulting in a surplus area of 0.1233ha being provided over and above the required open space provision. This surplus land can therefore be deducted from the 1.1500ha compensatory open space required to compensate for that part of the current open space which is proposed to be developed. This results in a compensatory open space requirement of 1.0267ha. However the applicant is proposing to provide a compensatory open space to the east of the site of 1.1490ha (1.2000

ha minus a SUDS balancing pond of 0.0510ha) for informal recreation / free play. Therefore the quantity of the proposed casual open space exceeds the total that is required to compensate for the development of the existing open space.

The quantity of both equipped and casual play space proposed by the application would surpass that on offer in the existing open space and hence the proposal would accord with the quantity criterion of NPPF paragraph 74.

#### b) Quality of open space

The existing open space is fairly well used and valued by the local community. However it has certain characteristics which detract from its quality. There is limited play equipment and the space is mainly laid to grass. However the grassed area has a significant incline and this does not make it a good space for ball games or informal play. The play equipment is old and dated and has limited play value compared with modern equipment. Also, the play area is not well integrated into the residential estate as a whole, with the majority of the adjoining houses turning their backs on the open space.

The new play area would have the benefit of up to date play equipment. The design and access statement suggests that this could include “natural” play equipment that responds in a safe yet stimulating manner to the topography of the site (e.g. tunnel slides, bridges and rock/mound climbers). The proposed MUGA would be a significant recreational gain, providing a concentrated and enclosed all-year round surfaced area for ball sports, and on a level surface. It would provide varied opportunities for play in all weathers. Having a MUGA would also enable smaller children to play safely and uninterrupted from ball games in the playground, allowing children of various ages to play safely alongside each other.

The compensatory open space for informal play to the east of the site would not include any play equipment and would be subject to land drainage improvements. It would be a less sloping site than the existing play area and would therefore be more suitable for ball games.

The quality of both equipped and casual play space proposed by the application would surpass that on offer in the existing open space and hence the proposal would accord with the quality criterion of NPPF paragraph 74.

#### c) Suitable location of open space

Concern has been expressed by some local residents that the proposed compensatory open space would not compensate for the development of the existing open space because it would be further from existing houses, with no natural surveillance from existing homes; parents would have to supervise their children in order to see them and hence only older children would be likely to use it. However there would in fact be good intervisibility between the equipped play area and the compensatory open space, with two 1.5m gaps being created in the boundary hedge and that hedge being thinned out and reduced in height to 1.5m. Furthermore, the houses at plots 2 to 8 would face towards this direction. But in any case, the compensatory open space is intended for use by older children who are permitted to play unsupervised, or by younger children accompanied by parents. It is therefore considered that the site of the proposed compensatory open space is not an unsuitable location.

### **9.3 Visual impact including impact on the AONB**

The site lies in a gap between two existing housing sites. As such, from wider viewpoints, the proposed development would very much be seen as part of the built form of the town. There would be no adverse impact on the scenic quality of the AONB. The proposed development of housing at the scale indicated could be accommodated within the site both in terms of heights and densities such that the proposed development would appear compatible with the area and acceptable from a visual amenity and landscape perspective. The detailed design matters would need to be considered at reserved matters stage.

### **9.4 Highway Safety**

The highway officer does not share the view of many neighbours that the proposal would be detrimental to highway safety. She considers that the local roads and junctions would cope adequately with the levels of traffic which would be generated. In any case, NPPF paragraph 32 states that development should only be refused on transport grounds “where the residual cumulative impacts of development are severe”.

The highway officer considers the location to be sustainable in transport terms. The site is located on the edge of the existing built environment and is within walking distance of access to public transport and within the recommended cycling distance of the town centre.

It should be noted that as layout and access are specified as reserved matters, some of the recommended conditions within the highway officer’s comments will only become relevant at reserved matters stage.

### **9.5 Residential amenity**

The current application seeks outline consent only, with all matters reserved. However officers consider that the illustrative layout is sufficient to demonstrate that the proposed number of dwellings could be accommodated on the site. In general the layout is well designed in terms of levels of amenity and it is not considered that this can be a reason to withhold outline planning permission.

### **9.6 Flooding, foul and surface water drainage**

Although the Council’s Land Drainage Engineer finds that the application is light on detail, he considers that the site is viable in principle. The site is outside flood zones 2 and 3 so there are no fluvial flood problems. The site is also clear of the surface water flood mapping zones and the area shown to be vulnerable with respect to groundwater. He raises no objection subject to a foul water drainage condition.

For its part, the Environment Agency also raises no objection, subject to a surface water drainage condition.

Thames Water raises no objection, subject to a Grampian style condition requiring a drainage strategy detailing any on and/or off site drainage works to be submitted to and approved by the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

### **9.7 Contamination**

Environmental Protection are satisfied that this matter can be adequately addressed via a planning condition. This would require specialist evaluation of the site and submission and approval of technical reports and remediation (if necessary), prior to construction.

### **9.8 Ecology**

The Council's ecologist requested that a mitigation and enhancement strategy, as required under NPPF, be drawn up and submitted to the LPA for approval. Such a strategy was subsequently drawn up and found to be acceptable as a suitable level of mitigation and enhancement for the site has been proposed. The ecologist requests that a condition be imposed requiring the development to be constructed in accordance with the submitted mitigation and enhancement strategy.

### **9.9 Archaeology**

The Council's archaeologist has requested additional field evaluation prior to any grant of planning permission. However such works would require a licence from the landowner and the agent considers they may be locally contentious to undertake at this stage as they may be seen as being presumptuous. The agent is therefore requesting that once a resolution for approval of the application is established, that this be made subject to a favourable outcome of the upfront field works considered necessary. Officers consider that this approach seems reasonable in the circumstances.

### **9.10 Sustainable construction**

Core Policy 41 promotes the incorporation of design measures in new development to reduce energy demand, and requires new homes to achieve at least Level 4 of the Code for Sustainable Homes. A Ministerial Statement dated 25 March 2015 stated that the government's policy is that planning permissions should not be granted subject to conditions requiring compliance with any technical housing standards. However legal advice that the Council has obtained is that for the moment Core Policy 41 should continue to be applied. Hence a condition is proposed that the development be required to achieve Level 4 of the Code for Sustainable Homes.

### **9.11 Legality of varying the existing Section 52 agreements**

The existing site is currently bound by two separate legal agreements which were secured as part of neighbouring developments back in the 1980's. Together with some additional minor matters, the key to these was to ensure that adequate and suitable provision was made in perpetuity for open space. One of the agreements was later varied to exclude part of the site.

On a procedural point, the variation/ replacement of the existing agreements do not need to take place in advance of the planning permission being issued but will of course need to be executed in advance of any development taking place to avoid any breach. It is therefore prudent that this issue is considered concurrently.

The legal tests for such an application are set out within Section 106(A)(6) of the Town and country Planning Act 1990. This makes it clear that where an application is made, the authority may determine;



- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

In essence, it is therefore for Members to decide whether to permit housing on this site and in doing so, whether to accept the release of this land from the agreements in favour of accepting the proposed compensatory open space on offer. This would need to be secured at the time of the sale of the land and a new or modified agreement entered into by the purchaser but prior to any change of use of the land.

Although the existing obligations continue to serve a useful purpose, it is suggested to Members that this purpose would be served equally well if it had effect subject to the modifications specified in the application. That is, if the area of existing open space the subject of the two agreements was effectively substituted by the proposed open space as set out above.

### **9.12 S106 contributions**

With the introduction of CIL after the consultation period ended, the education and playing fields contributions which were initially requested are no longer required and will be covered by CIL rather than by S106 contributions. However a S106 agreement will still be required to cover the provision of affordable housing and the provision of the open space and commuted sums for its maintenance.

## **10. Conclusion (The Planning Balance)**

The proposed housing development lies within the LOD, within which there is no “in principle” objection to residential development. The proposed development is sustainably located and would provide a valuable contribution towards meeting the Council’s housing and affordable housing targets, benefitting future occupants.

Many of the local residents who have made representation about the application consider that the existing open space is preferred over that proposed. However when comparing quantity and quality, it is difficult to conclude that the proposed equipped and casual open space provision is inadequate or that it could not equally well serve the residents of both existing and proposed developments. The proposal is therefore not considered to be contrary to the requirements of NPPF paragraph 74 that the existing open space should be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

Other matters of concern have been fully examined and many of these can be adequately addressed through planning conditions or at reserved matters stage. There are no overriding outstanding issues which officers consider would warrant a refusal of outline planning permission.

**RECOMMENDATION:**

That the decision to grant outline planning permission be deferred and delegated to the Area Development Manager subject to the favourable outcome of archaeological investigations and completion of the necessary legal agreements (to include the effective variation of the existing two S52 agreements), and subject to the following conditions:

1 No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;
- (b) The layout of the development;
- (c) The external appearance of the development;
- (d) The landscaping of the site;
- (e) The means of access to the site.

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

2 An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

3 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4 The landscaping approved as part of the reserved matters shall be carried out in the first planting and seeding season following the occupation of the dwellings or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development.

- 5 The details to be submitted under condition no. 1 of the layout of the development hereby permitted shall show a play area of at least 0.2357ha (to include both play equipment and a multi use games area) and casual open space of at least 1.1490ha, and no more than 39 dwellings. Before development commences, a timetable for the provision of the replacement open space, including equipped play area; MUGA and compensatory open space, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON: To define the terms of the planning permission and in order to ensure adequate open space and green infrastructure.

- 6 Prior to occupation of the 25th dwelling a 2 metre wide footway shall have been provided at the north west corner of the development, between the footways on the development and The Thorns, in accordance with details to be first submitted to and approved by the Local Planning Authority.

REASON: In the interests of providing adequate pedestrian access routes for residents of the development.

- 7 No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment has been carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

REASON: The application contained insufficient information to enable this matter to be considered.

- 8 No development shall commence until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

REASON: To ensure that sufficient capacity is made available to cope with the new development to avoid sewage flooding; and in order to avoid adverse environmental impact upon the community.

- 9 No development shall commence until impact studies of the existing water supply infrastructure have been submitted to and approved in writing by the local planning authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point. Development shall be carried out in accordance with the approved details.

REASON: To ensure that the water supply infrastructure has sufficient capacity to cope with the additional demand.

- 10 No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year critical storm with an allowance for climate change. The scheme shall also include details of maintenance and management after completion. The scheme shall be implemented in accordance with the approved details.

REASON: To prevent the increased risk of flooding, both on and off site.

- 11 No development approved by this permission shall commence until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details.

REASON: In the interests of sustainable development and climate change adaptation.

- 12 No development shall take place until an ecological landscape management plan, including long- term design objectives, management responsibilities and maintenance schedules for all areas of the compensatory recreational area /informal kick-about area, is submitted to and approved in writing by the local planning authority. The ecological landscape management plan shall be implemented as approved and any subsequent variations shall be agreed in writing by the local planning authority.

REASON: To protect wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in line with national planning policy.

- 13 No development approved by this permission shall be commenced until a Construction Environmental Management Plan (CEMP), incorporating pollution prevention measures, has been submitted to and approved by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and agreed timetable.
- REASON To prevent pollution of the water environment.
- 14 The development shall be constructed in accordance with the Ecology Mitigation and Enhancement Strategy produced by Malford Environmental Consulting on 20/07/15 for the site. Volumes and areas of habitat replacement and enhancement shall not be altered from those shown in the table in section 3.11 and on the plan at Appendix A, fig 1 of that document unless otherwise agreed in writing with the Local Planning Authority.
- REASON: To mitigate against the loss of existing biodiversity and nature habitats.
- 15 The dwellings shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- REASON:
- To ensure that the objectives of sustainable development set out in policy CP41 of the Wiltshire Core Strategy are achieved.
- 16 No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.
- REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity.
- 17 The development hereby permitted shall be carried out in accordance with the following approved plan: 1:2500 location plan 1418-104d E received 20/07/15.
- For the avoidance of any doubt, the site sections shown on drawings 1418-005 B and 1418-006 B received on 04/02/15, and the site layout at roof level shown on drawing 1418-002f F received on 20/07/15, are for illustrative purposes and do not form part of this planning approval.
- REASON: For the avoidance of doubt and in the interests of proper planning.
- 18 INFORMATIVE:
- This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [INSERT].
- 19 INFORMATIVE:
- This permission is for outline consent only, with all matters, including access,

reserved. The developer should note that in the event the access is to remain as specified in the illustrative layout drawing, the following recommended conditions would be likely:

Prior to first occupation of any of the dwellings hereby approved the access to the site shall have been laid out and constructed as detailed and in accordance with further construction details to be first submitted to and approved by the Local Planning Authority.

REASON: In the interests of safe and convenient access to the development.

Prior to first occupation of the development the carriageway at the junction of Rabley Wood View cul-de-sac with the main Rabley Wood View road which is the vehicular access to the site, shall have been widened to 5 metres over a length of 17 metres in accordance with details to be first submitted to and approved by the Local Planning Authority.

REASON: In the interests of safe and convenient access to the development.

Prior to occupation of the 34th dwelling the Rabley Wood View cul-de-sac serving existing dwellings 12-19 and its highway turning head (which provides the final access route into the development) shall have been planed off 30mm and resurfaced in accordance with details to be first submitted to and approved by the Local Planning Authority.

REASON: In the interests of safe and convenient access to the development.

20      INFORMATIVE:

In respect of the Reserved Matters submissions, it should also be noted that:

A rumble strip or entrance ramp will be required at the entrance to the shared surface road.

Road gradients must not exceed 1 in 15 without an early discussion with the highway engineer,

Carriageways must generally be 5.5 metres wide, and footways included segregated footways must be at least 2 metres wide and all junctions must meet visibility standards.

21      INFORMATIVE:

The development should include water efficient systems and fittings. These should include dual-flush toilets, water butts, water-saving taps, showers and baths, and appliances with the highest water efficiency rating (as a minimum). Greywater recycling and rainwater harvesting should be considered. An appropriate submitted scheme to discharge the water efficiency condition will include a water usage calculator showing how the development will not exceed a total (internal and external) usage level of 105 litres per person per day.

22      INFORMATIVE:

Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. The following should be addressed within the CEMP when discharging the condition:

- the use of plant and machinery
- oils/chemicals and materials
- the use and routing of heavy plant and vehicles
- wheel washing and dirty water disposal
- the location and form of work and storage areas and compounds
- the control and removal of spoil and wastes.

The applicant should refer to the Environment Agency's Pollution Prevention Guidelines at: <http://www.environment-agency.gov.uk/business/topics/pollution/39083.aspx>.